



## 2001 SENATE BILL 174

May 3, 2001 - Introduced by Senators WELCH and DARLING, cosponsored by Representatives OLSEN, TOWNSEND, STONE, RHOADES, WADE, BERCEAU, HAHN, MUSSER, KRAWCZYK and OWENS. Referred to Committee on Labor and Agriculture.

1     **AN ACT** *to amend* 103.67 (2) (e) and 103.70 (1); and *to create* 103.64 (1) of the  
2             statutes; **relating to:** the hours that a minor 14 years of age or over may be  
3             employed in Christmas tree farming or at a nursery.

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### *Analysis by the Legislative Reference Bureau*

Under the current state child labor law, the department of workforce development (DWD) may fix maximum hours of employment for minors per day and per week. Under that authority, DWD has promulgated rules permitting a minor 12 to 15 years of age to work for four hours on a school day, eight hours on a nonschool day or on the last day of a school week, 18 hours during a school week, 24 hours during a week in which the minor's school is in session less than five days, and 40 hours during a nonschool week; and permitting a minor 16 or 17 years of age to work for five hours on a school day, eight hours on a nonschool day or the last day of a school week, 26 hours during a school week, 32 hours during a week in which the minor's school is in session less than five days, and 50 hours during a nonschool week; except that a minor 14 years of age or over may be employed in agricultural pursuits in excess of those maximum hours per week during peak periods.

Regulations issued under the federal Fair Labor Standards Act (FLSA), which governs employers that are engaged in interstate commerce, that is, employers that produce goods for sale outside their state and whose annual gross sales are \$500,000 or more, contain similar restrictions on the maximum hours that a minor may work and a similar exception for minors 14 years of age or over employed in agriculture. According to a Wage and Hour Opinion Letter issued by the federal secretary of labor,

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however, that exception for employment in agriculture does not apply to work on a Christmas tree farm because Christmas trees are not agricultural commodities as that term is used in the definition of “agriculture” in the FLSA.

This bill defines “agriculture” for purposes of the state child labor law to include the planting, cultivating, growing, harvesting, handling, and preparation for market, or for delivery to storage or to market or to a carrier for transportation to market, of evergreen trees for eventual sale as Christmas trees (Christmas tree farming) and of “nursery stock,” which is defined under current law to mean plants and plant parts that can be propagated or grown, for eventual sale. Accordingly, under DWD’s rules, as affected by the bill, a minor 14 years of age or over may be employed in Christmas tree farming or at a nursery by an employer that is not engaged in interstate commerce in excess of the maximum hours per week set by DWD by rule during peak periods. For employers engaged in interstate commerce, however, the maximum hours established under the FLSA continue to apply.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 103.64 (1) of the statutes is created to read:

2           103.64 (1) “Agriculture” has the meaning given in 29 USC 203 (f).  
3           “Agriculture” also includes the planting, cultivating, growing, harvesting, handling,  
4           and preparation for market, or for delivery to storage or to market or to a carrier for  
5           transportation to market, of evergreen trees for eventual sale as Christmas trees and  
6           of nursery stock, as defined in s. 94.10 (1) (f), for eventual sale.

7           **SECTION 2.** 103.67 (2) (e) of the statutes is amended to read:

8           103.67 (2) (e) Minors 12 years of age or older may be employed in agricultural  
9           pursuits agriculture.

10          **SECTION 3.** 103.70 (1) of the statutes is amended to read:

11          103.70 (1) Except as otherwise provided in sub. (2) and in ss. 103.21 to 103.31,  
12          103.78, 938.245 (2) (a) 5. b., 938.32 (1t) (a) 2., and 938.34 (5) (b) and (5g) (c), and as  
13          may be provided under s. 103.79, a minor, unless indentured as an apprentice in

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1 accordance with s. 106.01, or unless 12 years and over and engaged in agricultural  
2 pursuits agriculture, or unless 14 years and over and enrolled in a youth  
3 apprenticeship program under s. 106.13, shall not be employed or permitted to work  
4 at any gainful occupation or employment unless there is first obtained from the  
5 department or a permit officer a written permit authorizing the employment of the  
6 minor within those periods of time stated in the permit, which shall not exceed the  
7 maximum hours prescribed by law.

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(END)